



E-MAIL:  
[rarnold@knpa.com](mailto:rarnold@knpa.com)

FOUR SEASONS TOWER  
1441 BRICKELL AVENUE  
SUITE 1100  
MIAMI, FLORIDA 33131  
TELEPHONE 305.373.1000  
FACSIMILE 305.372.1861  
[WWW.KNPA.COM](http://WWW.KNPA.COM)

July 9, 2018

Hon. Nicholas G. Garaufis  
United States District Court Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, N.Y. 11201

*Via ECF*

Re: **In re American Express Anti-Steering Rules Antitrust Litig. (MDL 2221)**

Dear Judge Garaufis:

In accordance with the Court's October 24, 2017 Order, the Merchant Plaintiffs and American Express jointly submit this letter regarding next steps in the Merchant Plaintiffs' Action following the Supreme Court's disposition of the Government Action.

The parties have conferred, and we jointly request that the Court schedule a case management conference to discuss the following points and any others the Court wishes to address.

In addition, the Parties have conferred, and we report: 1) for the convenience of the Court and to conform their pending motions to the Supreme Court's decision, the parties propose filing amended and restated versions of those motions that are already before the Court; and 2) American Express will file an additional motion for summary judgment. The affected motions that are already before the court are:

- A. Defendants' Motion and Memorandum in Support of Summary Judgment Against the Individual Plaintiffs with Respect to the Existence of an Amex-only market (Sept. 26, 2013) (Dkt. No. 277); Merchant Plaintiffs' Opposition (Nov. 21, 2013) (Dkt. No. 287); Defendants' Reply (Jan. 9, 2014) (Dkt. No. 308); and Merchant Plaintiffs' Sur-Reply (Jan. 24, 2014) (Dkt. No. 324).
- B. Merchant Plaintiffs' Motion and Memorandum in Support to Supplement Fact and Expert Discovery and File Amended Complaints (March 10, 2017) (Dkt. No. 792); Defendants' Opposition (March 31, 2017) (Dkt. No. 793); Merchant Plaintiffs' Supplemental Memorandum (May 12, 2017) (Dkt. No. 799); Defendants' Supplemental Memorandum (May 19, 2017) (Dkt. No. 800); Merchant Plaintiffs' Partial Response to Defendants' Supplemental Memorandum (May 24, 2017) (Dkt. No. 801); and Defendants' Response (May 25, 2017) (Dkt. No. 802).

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TEXAS OFFICE  
ONE CONGRESS PLAZA  
111 CONGRESS AVENUE, SUITE 1060  
AUSTIN, TEXAS 78701  
TELEPHONE 512.480.8023  
FACSIMILE 512.480.8037

WASHINGTON SATELLITE OFFICE:  
1101 PENNSYLVANIA AVENUE, N.W., 6TH FLOOR  
WASHINGTON, D.C. 20004-2436  
TELEPHONE 202.756.4373  
FACSIMILE 202.756.7323

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The parties have further conferred regarding the schedule for these motions and propose the following:

Event	Deadline
Plaintiffs amend or replace the existing motion for supplemental discovery and to file amended complaints	July 27, 2018
Defendants respond to Plaintiffs' motion for supplemental discovery and to file amended complaints	August 24, 2018
Defendants file their amended and restated summary judgment motion regarding Amex-only market	August 24, 2018
Defendants file a new summary judgment motion	August 24, 2018
Plaintiffs' reply in further support of their motion for supplemental discovery and to amend the complaints	September 21, 2018
Plaintiffs oppose Defendants' summary judgment motion regarding Amex-only market	October 5, 2018 <sup>1</sup>
Plaintiffs oppose Defendants' new summary judgment motion	October 5, 2018 <sup>2</sup>
Defendants' reply to Plaintiffs' opposition to the SJ motion regarding Amex-only market	November 2, 2018
Defendants' reply to Plaintiffs' opposition to the new SJ motion	November 2, 2018

<sup>1</sup> Plaintiffs' position is that Plaintiffs' opposition date for both summary judgment motions is conditioned on reviewing Defendants' papers. Plaintiffs' reserve their right to respond and oppose Defendants' summary judgment motions (at Plaintiffs' election) six weeks from either the denial of Plaintiffs' motion for supplemental discovery or the complete production of all supplemental discovery permitted by the Court in response to Plaintiffs' motion. Defendants' reply dates would also move accordingly. Plaintiffs will inform the court of this election within 14 days of receiving service of Defendants' summary judgment papers.

Defendants' position is that the arguments in Defendants' motions for summary judgment will not require additional discovery and Plaintiffs should submit opposition papers on October 5, 2018.

<sup>2</sup> See note 1.

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The parties jointly request oral argument on these motions at a convenient time for the Court.

The parties have also conferred with regard to the Court's request for trial availability. The parties propose that the case be set for trial five months after the Court's order on the motions discussed above.

Respectfully submitted,



Richard Alan Arnold  
For the Merchant Plaintiffs

RAA:mb

cc: Evan Chesler, Esquire  
Donald Flexner, Esquire

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